

REMARKS

The Examiner rejected claims 11, 13, 14, 16 and 18 under 35 U.S.C. §103(a) as being unpatentable over Doss in combination with Schacher and Wuchinich. The Examiner rejected claims 20, 21, and 23 under 35 U.S.C. §103(a) as being unpatentable over Doss in combination with Wuchinich. The Examiner rejected claim 22 under 35 U.S.C. §103(a) as being unpatentable over Doss in combination with Wuchinich and further in view of Schacher. The Examiner states that Doss discloses a probe which limits the penetration depth of the tip. As the Undersigned understands the Examiner's position preventing penetration is in essence limiting the penetration depth of the tip. The Applicant respectfully traverses this contention.

Claim 11 recites a tip that extends "from" a stop that limits the penetration depth of the tip into the cornea. Assuming *arguendo* that the outer sleeve 42 of Doss is a stop, the tip does not "extend from" the stop, if anything the electrode is "within" the stop. Additionally, the claim recites a stop that limits the penetration depth of the tip into the cornea. Doss clearly does not disclose penetration of the electrode into the cornea. The outer sleeve of Doss does not limit the penetration depth of a tip, it prevents penetration of the tip.

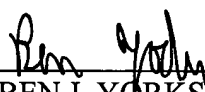
Independent claim 20 recites inserting a tip into a cornea until a stop engages the cornea to limit a penetration depth of the tip. This step is clearly not disclosed in Doss. To the contrary, Doss actually teaches away from contact between the electrode and the cornea. The Examiner states that the combination of Schachar and Doss would render obvious the recited claims. The approaches in Doss and Schachar disclose techniques that fail to provide a sufficient amount of energy to denature corneal tissue without damaging the cornea. As noted in the Feldman article the technique disclosed in Schachar, sometimes referred to as the Fyodorov method, allows regression. The Doss technique fails to deliver enough energy into the central portion of the

stroma and thus has never found commercial application. This is distinguished from the recited claims which recite delivering RF energy directly into the stroma through insertion of a tip. Such an approach has been found to be the only means to successfully correct for hyperopia. The Assignee of the above-entitled application Refractec, Inc. has commercialized a product and to date is the only FDA-approved supplier of equipment for this technique, promoted under the trademark Conductive Keratoplasty or CK. The Applicant invites the Examiner to visit its website at refractec.com to obtain a better understanding of this procedure. The Applicant submits that Doss, Schachar and Wuchinich do not render obvious the recited claims of the above entitled application.

In view of the above it is submitted that the claims are in condition for allowance. Reconsideration of the rejections is requested. Allowance of claims 11, 13, 14, 16, 18, 20, 21 and 23 at an early date is solicited.

Respectfully submitted,
IRELL & MANELLA LLP

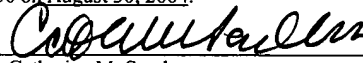
Dated: August 30, 2004


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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on August 30, 2004.


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8-30-2004
Date